

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHELLE LYNN BURNELL, *pro se*

No. 2:22-cv-00265-JLR

Plaintiff,

VS.

LEWIS BRISBOIS BISGAARD & SMITH
LLP, (*a foreign limited liability partnership*);
and HEATHER M. JENSEN, WSBA #29635
(*individual capacity*; 42 U.S.C §1983); and to
ANNEMARIE McDOWELL, WSBA#50470
(*individual capacity*; 42 U.S.C §1983).

Defendant(s).

DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO THE
AMENDED COMPLAINT

Defendants Lewis Brisbois Bisgaard & Smith LLP (“LBBS”), Heather M. Jensen, and AnneMarie McDowell (collectively “Defendants”) as and for their Answer and Affirmative Defenses to the Complaint by Plaintiff, Michelle Burnell, hereby respond as follows:

J. NATURE OF ACTION

1.1 Defendants admit this is an action alleging certain claims including claims of employment discrimination. Defendants deny the remaining allegations of this paragraph.

II. PARTIES

2.1 Defendants admit that Plaintiff is an employee of LBBS. Defendants deny the remaining allegations of this paragraph.

2.2 Defendants admit that LBBS is a foreign limited liability partnership with an office in the State of Washington and that Plaintiff, Defendant AnneMarie McDowell, and Defendant Heather Jensen are employed at LBBS. Defendants deny the remaining allegations in this paragraph.

2.3 Defendants admit that Defendant Heather Jensen was the Managing Partner at the Seattle LBBS office at all times relevant to this action. Defendants deny the remaining allegations in this paragraph.

2.4 Defendants admit that Defendant AnneMarie McDowell was a Partner at the Seattle LBBS office at all times relevant to this action. Defendants deny the remaining allegations of this paragraph.

III. JURISDICTION AND VENUE

3.1 Defendants admit that this Court has jurisdiction based on disputed claims of discrimination under Title VII of the Civil Rights Act. Defendant denies that this Court has jurisdiction to the extent that Plaintiff alleges claims of unsafe work conditions or retaliation for reporting unsafe work conditions because jurisdiction for those claims rests with the appropriate federal or state agency. Defendants deny the remaining allegations in this paragraph.

3.2 Defendants admit that venue is appropriate in this Court because, during the relevant period of time, Defendants transacted business in King County, Washington, and because the events alleged by Plaintiff (which are disputed by Defendants) occurred in King County, Washington.

IV. FACTS

4.1 Defendants admit that on December 2, 2020, at 9:30 am, Defendant Jensen requested a meeting with Plaintiff. Defendants admit that Defendant McDowell attended the meeting solely as a witness because she happened to be one of the only people in the office that

1 day due to COVID restrictions. Defendants deny that Defendant McDowell said anything at the
2 meeting or played any role regarding any employment actions allegedly taken against Plaintiff.
3 Defendants deny the remaining allegations in this paragraph.

4 4.2 Denied.

5 4.3 Defendants admit that Plaintiff was on Family and Medical Leave (“FMLA”)
6 from September 1, 2020, until November 30, 2020.

7 4.4 Denied.

8 4.5 Denied.

9 4.6 Defendants admit that the meeting between Plaintiff and Defendant Jensen and
10 McDowell took place in Defendant Jensen’s office because Jensen is the managing attorney.
11 Defendant denies the remaining allegations set forth in this paragraph.

12 4.7 Denied.

13 4.8 Denied.

14 4.9 Defendants admit that on April 8, 2020, Grace Kositzky was sent home for having
15 a cough. Defendants deny the remaining allegations set forth in this paragraph.

16 4.10 Defendants admit that due to COVID-19 essential worker restrictions, Plaintiff
17 was told by Stacy Bowers, Seattle LBBS office’s Office Administrator, that she was not an
18 essential worker and given a firm laptop and hot spot to work from home. Defendants deny the
19 remaining allegations set forth in this paragraph.

20 4.11 Defendants admit that Grace Kositzky was sent home for a cough on April 9,
21 2020. Defendants deny the remaining allegations set forth in this paragraph.

22 4.12 Denied.

23 4.13 Denied.

24 4.14 Denied.

25 4.15 Denied.

26 4.16 Denied.

27

V. PRAYER FOR RELIEF

Defendants deny that Plaintiff is entitled to any relief, including damages, fees, costs, and other relief demanded by Plaintiff in subparagraphs 1-3.

AFFIRMATIVE DEFENSES

Because Plaintiff has not identified causes of action, Defendants are unable to identify every possible affirmative defense, and reserve their right to identify affirmative defenses once the causes of action are identified. But based on the facts alleged in the Amended Complaint, Defendants identify the following affirmative defenses that might apply to this lawsuit:

1. Failure to state a claim.
 2. Failure to mitigate damages.
 3. Failure to exhaust administrative remedies.
 4. The claims in this case are subject to an arbitration agreement between the parties

5. The Court lacks jurisdiction over any claim for an alleged unsafe workplace or alleged retaliation for allegedly complaining about an unsafe workplace because sole jurisdiction of those claims rests with one or more federal or state regulatory agencies including OSHA and its state counterpart, WISHA.

6. Plaintiff was not a “client” of Defendants and, therefore, cannot be liable for any “professional negligence” Alleged by Plaintiff.

7. Plaintiff failed to trigger any duty on the part of Defendants to engage in the interactive process or to offer a reasonable accommodation as alleged by Plaintiff because Plaintiff failed to properly disclose the existence of an alleged disability, failed to provide adequate medical documentation, and failed to meaningfully engage in the interactive process sufficient to state a claim for alleged failure to accommodate a disability.

8. Claims are barred by the worker's compensation doctrine.

9. LBBS is not liable for acts of its employees that fall outside the employee's scope of employment with LBBS.

1 DATED: August 8, 2022.

LEWIS BRISBOIS BISGAARD & SMITH LLP

3 *s/Benjamin J. Stone*
4 _____

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Michelle Lynn Burnell, Pro Se Plaintiff michelleburnell@ymail.com

Dated: August 8, 2022 at Kirkland, Washington.

s/Logan Platvoet
Logan Platvoet, Legal Secretary
Logan.Platvoet@lewisbrisbois.com